

City of Fayetteville Staff Review Form

2019-0529

Legistar File ID

10/1/2019

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Ted Jack

9/12/2019

PARKS & RECREATION (520)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Resolution to approve a contract in the amount of \$37,408.00 and a project contingency in the amount of \$1,592.00 for a total cost not to exceed \$39,000.00, with Olsson Inc. of Fayetteville, AR to provide design, engineering, surveying, and construction administration services for the expansion and improvements to the Township Street parking lot at Gulley Park, per RFQ #19-01, Selection #22, and approval of a budget adjustment.

Budget Impact:

| | |
|--|--|
| 4605.860.7503-5806 | |
| 4605.860.7503-5860.02 | Park Projects 2019 Bonds |
| Account Number | Fund |
| 46050.7503.1000 | Park Improvements - Township Parking |
| Project Number | Project Title |
| Budgeted Item? Yes | Current Budget \$ - |
| | Funds Obligated \$ - |
| | Current Balance \$ - |
| Does item have a cost? Yes | Item Cost \$ 39,000.00 |
| Budget Adjustment Attached? Yes | Budget Adjustment \$ 250,000.00 |
| | Remaining Budget \$ 211,000.00 |

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # RFQ 19-01, #22

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF OCTOBER 1, 2019

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff
Connie Edmonston, Parks and Recreation Director

FROM: Ted Jack, Park Planning Superintendent

DATE: September 12, 2019

SUBJECT: Resolution to approve a contract in the amount of \$37,408.00 and a project contingency in the amount of \$1,592.00 for a total cost not to exceed \$39,000.00, with Olsson Inc. of Fayetteville, AR to provide design, engineering, surveying, and construction administration services for the expansion and improvements to the Township Street parking lot at Gulley Park, per RFQ #19-01, Selection #22.

RECOMMENDATION:

Resolution to approve a contract in the amount of \$37,408.00 and a project contingency in the amount of \$1,592.00 for a total cost not to exceed \$39,000.00, with Olsson Inc. of Fayetteville, AR to provide design, engineering, surveying, and construction administration services for the expansion and improvements to the Township Street parking lot at Gulley Park, per RFQ #19-01, Selection #22.

BACKGROUND:

Gulley Park is a heavily used 38-acre community park located off Old Wire Road and Township Street in the northeast park quadrant of Fayetteville. The park currently has walking trails, a large playground, restrooms, pavilion, amphitheater, open fields, a prairie area, wooded creek areas, and the new Niokaska Creek Trail. Apple Seeds Teaching Farm, in partnerships with the city, utilizes two acres of the park.

The Gulley Park master plan was updated in 2018 and expansion of the parking lots was found to be a high priority. Other planned improvements include enhancing the playground area, including expanding the playground and adding an interactive fountain, new shelters, picnic areas, lake improvements, tennis and pickleball courts, a dog park and other enhancements.

DISCUSSION:

\$250,000 in bond funds have been targeted towards this parking lot expansion. Olsson, Inc. was selected through an RFQ selection process (RFQ 19-01 Selection 22) to serve as the professional consultant for this project. The requested contract with Olsson, Inc. will authorize the design and engineering for expansion of the parking lot at the Township Street park entrance in accordance with the park master plan. The parking lot will be expanded from 31 spaces to approximately 61 spaces and storm water features, walks, and landscaping will be added. Bond funds will be utilized for this design contract. Although a design and cost estimate

has not been completed, it is expected that approximately \$100,000 in additional funds from the 2018 five-year capital plan will be utilized for construction along with the \$250,000 in bond funds.

BUDGET/STAFF IMPACT:

The contract will not exceed \$39,000.00 which includes the negotiated price of \$37,408.00 plus a contingency of \$1,592.00. Funding for this project is available in project #46050.7503.1000, Gulley Park Improvements.

Attachments:

Budget Adjustment
SRF-Olsson Inc.
Olsson Inc. Contract

AGREEMENT
For
PROFESSIONAL ENGINEERING SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
OLSSON INC.

GULLEY PARK TOWNSHIP PARKING EXPANSION

THIS AGREEMENT is made as of _____, 2019, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and Olsson, Inc. (hereinafter called ENGINEER).

CITY OF FAYETTEVILLE from time to time requires professional engineering services in connection with the evaluation, design, and/or construction administration of capital improvement projects. Therefore, CITY OF FAYETTEVILLE and ENGINEER in consideration of their mutual covenants agree as follows:

ENGINEER shall serve as CITY OF FAYETTEVILLE's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of ENGINEER's services. All services shall be performed under the direction of a professional engineer registered in the State of Arkansas and qualified in the particular field.

SECTION 1 - AUTHORIZATION OF SERVICES

- 1.1 Services on any assignment shall be undertaken only upon written Authorization of CITY OF FAYETTEVILLE and agreement of ENGINEER.
- 1.2 Assignments may include services described hereafter as Basic Services or as Additional Services of ENGINEER.
- 1.3 Changes, modifications or amendments in scope, price or fees to this contract shall **not** be allowed without a formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, costs, fees, or delivery schedule.

SECTION 2 - BASIC SERVICES OF ENGINEER

- 2.1 Perform professional services in connection with the Project as hereinafter stated.
 - 2.1.1 The Scope of Services to be furnished by ENGINEER during the Project is included in Appendix A attached hereto and made part of this Agreement.
- 2.2 ENGINEER shall coordinate their activities and services with the CITY OF FAYETTEVILLE. ENGINEER and CITY OF FAYETTEVILLE agree that ENGINEER has full responsibility for the engineering services.

SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

- 3.1 CITY OF FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of ENGINEER.
 - 3.1.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
 - 3.1.2 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
 - 3.1.3 Assist ENGINEER in obtaining access to property reasonably necessary for ENGINEER to perform its services under this Agreement.
 - 3.1.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by ENGINEER and render in writing decisions pertaining thereto.
 - 3.1.5 The Sustainability Director is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The sustainability director shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
 - 3.1.6 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to ENGINEER in a timely manner.

SECTION 4 - PERIOD OF SERVICE

- 4.1 This Agreement will become effective upon the first written notice by CITY OF FAYETTEVILLE authorizing services hereunder.
- 4.2 The provisions of this Agreement have been agreed to in anticipation of the orderly progress of the Project through completion of the services stated in the Agreement. ENGINEER will proceed with providing the authorized services immediately upon receipt of written authorization from CITY OF FAYETTEVILLE. Said authorization shall include the scope of the services authorized and the time in which the services are to be completed. The anticipated schedule for this project is included as Appendix A.

SECTION 5 - PAYMENTS TO ENGINEER

- 5.1 The maximum not-to-exceed amount authorized for this Agreement is **\$37,408.00**. The CITY OF FAYETTEVILLE shall compensate ENGINEER based on a Unit Price or Lump Sum basis as described in Appendix A.
- 5.2 Statements
 - 5.2.1 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate for professional services consistent with ENGINEER's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by ENGINEER and approved by CITY OF FAYETTEVILLE. Applications for payment shall be accompanied each month by the updated project schedule as the basis for determining the value earned as the work is accomplished. Final payment for professional services shall be

made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of the study and report for the Project.

5.3 Payments

5.3.1 All statements are payable upon receipt and due within thirty (30) days. If a portion of ENGINEER's statement is disputed by CITY OF FAYETTEVILLE, the undisputed portion shall be paid by CITY OF FAYETTEVILLE by the due date. CITY OF FAYETTEVILLE shall advise ENGINEER in writing of the basis for any disputed portion of any statement. CITY OF FAYETTEVILLE will make reasonable effort to pay invoices within 30 days of date the invoice is approved, however, payment within 30 days is not guaranteed.

5.4 Final Payment

5.4.1 Upon satisfactory completion of the work performed under this Agreement, as a condition before final payment under this Agreement, or as a termination settlement under this Agreement, ENGINEER shall execute and deliver to CITY OF FAYETTEVILLE a release of all claims against CITY OF FAYETTEVILLE arising under or by virtue of this Agreement, except claims which are specifically exempted by ENGINEER to be set forth therein. Unless otherwise provided in this Agreement or by State law or otherwise expressly agreed to by the parties to this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of CITY OF FAYETTEVILLE's claims against ENGINEER or his sureties under this Agreement or applicable performance and payment bonds, if any.

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Insurance

6.1.1 During the course of performance of these services, ENGINEER will maintain (in United States Dollars) the following minimum insurance coverages:

| <u>Type of Coverage</u> | <u>Limits of Liability</u> |
|--|--------------------------------------|
| Workers' Compensation Employers' Liability | Statutory \$500,000 Each Accident |
| Commercial General Liability Bodily Injury and Property Damage | \$1,000,000 Combined Single Limit |
| Automobile Liability: Bodily Injury and Property Damage | \$1,000,000 Combined Single Limit |
| Professional Liability Insurance | \$1,000,000 Each Claim |

ENGINEER will provide to CITY OF FAYETTEVILLE certificates as evidence of the specified insurance within ten days of the date of this Agreement and upon each renewal of coverage.

6.1.2 CITY OF FAYETTEVILLE and ENGINEER waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of ENGINEER's services.

6.2 Professional Responsibility

6.2.1 ENGINEER will exercise reasonable skill, care, and diligence in the performance of ENGINEER's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. CITY OF FAYETTEVILLE will promptly report to ENGINEER any defects or suspected defects in ENGINEER's services of which CITY OF FAYETTEVILLE becomes aware, so that ENGINEER can take measures to minimize the consequences of such a defect. CITY OF FAYETTEVILLE retains all remedies to recover for its damages caused by any negligence of ENGINEER.

6.3 Cost Opinions and Projections

6.3.1 Cost opinions and projections prepared by ENGINEER relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on ENGINEER's experience, qualifications, and judgment as a design professional. Since ENGINEER has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, ENGINEER does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by ENGINEER.

6.4 Changes

6.4.1 CITY OF FAYETTEVILLE shall have the right to make changes within the general scope of ENGINEER's services, with an appropriate change in compensation and schedule only after Fayetteville City Council approval of such proposed changes and, upon execution of a mutually acceptable amendment or change order signed by the Mayor of the CITY OF FAYETTEVILLE and the duly authorized officer of ENGINEER.

6.5 Termination

6.5.1 This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

6.5.1.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

6.5.1.2 An opportunity for consultation with the terminating party prior to termination.

6.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that ENGINEER is given:

6.5.2.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

- 6.5.2.2 An opportunity for consultation with the terminating party prior to termination.
- 6.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but
 - 6.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,
 - 6.5.3.2 Any payment due to ENGINEER at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of ENGINEER's default.
- 6.5.4 If termination for default is effected by ENGINEER, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by ENGINEER relating to commitments which had become firm prior to the termination.
- 6.5.5 Upon receipt of a termination action under Paragraphs 6.5.1 or 6.5.2 above, ENGINEER shall:
 - 6.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),
 - 6.5.5.2 After payment in accordance with Paragraphs 6.5.3 and 6.5.4 above, deliver or otherwise make available to CITY OF FAYETTEVILLE all project deliverables at the latest stage of completion (e.g. 30%, 90%, etc.) CITY OF FAYETTEVILLE shall have the limited right to use the deliverables subject to the provisions of Paragraph 6.12.2.
- 6.5.6 Upon termination under Paragraphs 6.5.1 or 6.5.2 above CITY OF FAYETTEVILLE may take over the work and may award another party an agreement to complete the work under this Agreement.
- 6.5.7 If, after termination for failure of ENGINEER to fulfill contractual obligations, it is determined that ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of CITY OF FAYETTEVILLE. In such event, adjustments of the agreement price shall be made as provided in Paragraph 6.5.4 of this clause.
- 6.6 Delays
 - 6.6.1 In the event the services of ENGINEER are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond ENGINEER's reasonable control, ENGINEER shall be entitled to additional compensation and time for reasonable costs incurred by ENGINEER in temporarily closing down or delaying the Project.
- 6.7 Rights and Benefits
 - 6.7.1 ENGINEER's services will be performed solely for the benefit of CITY OF FAYETTEVILLE and not for the benefit of any other persons or entities.
- 6.8 Dispute Resolution
 - 6.8.1 Scope of Paragraph: The procedures of this Paragraph shall apply to any and all disputes between CITY OF FAYETTEVILLE and ENGINEER which arise from, or in any way are

related to, this Agreement, including, but not limited to the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of CITY OF FAYETTEVILLE or ENGINEER in the performance of this Agreement, and disputes concerning payment.

- 6.8.2 Exhaustion of Remedies Required: No action may be filed unless the parties first negotiate. If timely Notice is given under Paragraph 6.8.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 6.8.3 and 6.8.4 have been complied with.
- 6.8.3 Notice of Dispute
 - 6.8.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice.
 - 6.8.3.2 For disputes arising within one year after the making of final payment, CITY OF FAYETTEVILLE shall give ENGINEER written Notice at the address listed in Paragraph 6.14 within thirty (30) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.
- 6.8.4 Negotiation: Within seven days of receipt of the Notice, the Project Managers for CITY OF FAYETTEVILLE and ENGINEER shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level, then, upon written request of either side, the matter shall be referred to the President of ENGINEER and the Mayor of CITY OF FAYETTEVILLE or his designee. These officers shall meet at the Project Site or such other location as is agreed upon within 30 days of the written request to resolve the dispute.
- 6.9 CITY OF FAYETTEVILLE represents that it has sufficient funds or the means of obtaining funds to remit payment to ENGINEER for services rendered by ENGINEER.
- 6.10 Publications
 - 6.10.1 Recognizing the importance of professional development on the part of ENGINEER's employees and the importance of ENGINEER's public relations, ENGINEER may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to ENGINEER's services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to ENGINEER. CITY OF FAYETTEVILLE may require deletion of proprietary data or confidential information from such publications, but otherwise CITY OF FAYETTEVILLE will not unreasonably withhold approval. The cost of ENGINEER's activities pertaining to any such publication shall be for ENGINEER's account.
- 6.11 Indemnification
 - 6.11.1 CITY OF FAYETTEVILLE agrees that it will require all construction Contractors to indemnify, defend, and hold harmless CITY OF FAYETTEVILLE and ENGINEER from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in

whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

6.12 Ownership of Documents

6.12.1 All documents provided by CITY OF FAYETTEVILLE including original drawings, CAD drawings, estimates, field notes, and project data are and remain the property of CITY OF FAYETTEVILLE. ENGINEER may retain reproduced copies of drawings and copies of other documents.

6.12.2 The CITY OF FAYETTEVILLE acknowledges the Engineer's plans and specifications, including all documents on electronic media ("delivered documents"), as instruments of professional service. Nevertheless, the delivered documents prepared under this Agreement shall be delivered to and become the property of the CITY OF FAYETTEVILLE upon completion of the services and payment in full of all monies due to the Engineer. Except for the Engineer's services provided for by this Agreement as related to the construction and completion of the Project, the ENGINEER accepts no liability arising from any reuse of the delivered documents by the CITY OF FAYETTEVILLE, unless the Engineer is retained by CITY OF FAYETTEVILLE to make modifications or otherwise reuse the delivered documents. Except where the CITY OF FAYETTEVILLE reuses the delivered documents subsequent to the completion of the Project, nothing contained in this paragraph shall alter the Engineer's responsibilities and obligations under this Agreement.

6.12.3 Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. ENGINEER makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

6.13 Notices

6.13.1 Any Notice required under this Agreement will be in writing, addressed to the appropriate party at the following addresses:

CITY OF FAYETTEVILLE's address:
113 West Mountain Street
Fayetteville, Arkansas 72701

ENGINEER's address:
302 E. Millsap Road
Fayetteville, Arkansas 72703

6.14 Successor and Assigns

6.14.1 CITY OF FAYETTEVILLE and ENGINEER each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither CITY OF FAYETTEVILLE nor ENGINEER shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.

6.15 Controlling Law

6.15.1 This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Arkansas without regard to any conflicts of law provisions.

6.16 Entire Agreement

6.16.1 This Agreement represents the entire Agreement between ENGINEER and CITY OF FAYETTEVILLE relative to the Scope of Services herein. Since terms contained in purchase orders do not generally apply to professional services, in the event CITY OF FAYETTEVILLE issues to ENGINEER a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by ENGINEER, shall be considered as a document for CITY OF FAYETTEVILLE's internal management of its operations.

SECTION 7 - SPECIAL CONDITIONS

7.1 Additional Responsibilities of ENGINEER

7.1.1 CITY OF FAYETTEVILLE's review, approval, or acceptance of design drawings, specifications, reports and other services furnished hereunder shall not in any way relieve ENGINEER of responsibility for the technical adequacy of the work. Neither CITY OF FAYETTEVILLE's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

7.1.2 ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by ENGINEER's negligent performance of any of the services furnished under this Agreement except for errors, omissions or other deficiencies to the extent attributable to CITY OF FAYETTEVILLE or CITY OF FAYETTEVILLE-furnished data.

7.1.3 ENGINEER's obligations under this clause are in addition to ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that CITY OF FAYETTEVILLE may have against ENGINEER for faulty materials, equipment, or work.

7.2 Remedies

7.2.1 Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and ENGINEER arising out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

7.3 Audit: Access to Records

7.3.1 ENGINEER shall maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this Agreement. ENGINEER shall also maintain the financial information and data used by ENGINEER in the preparation of support of the cost submission required for any negotiated agreement or change order and send to CITY OF FAYETTEVILLE a copy of the cost

summary submitted. CITY OF FAYETTEVILLE, the State or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. ENGINEER will provide proper facilities for such access and inspection.

7.3.2 Records under Paragraph 7.3.1 above, shall be maintained and made available during performance on assisted work under this Agreement and until three years from the date of final payment for the project. In addition, those records which relate to any controversy arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

7.3.3 This right of access clause (with respect to financial records) applies to:

7.3.3.1 Negotiated prime agreements:

7.3.3.2 Negotiated change orders or agreement amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price agreement:

7.3.3.3 Agreements or purchase orders under any agreement other than a formally advertised, competitively awarded, fixed price agreement. However, this right of access does not apply to a prime agreement, lower tier subagreement or purchase order awarded after effective price competition, except:

7.3.3.3.1 With respect to record pertaining directly to subagreement performance, excluding any financial records of ENGINEER;

7.3.3.3.2 If there is any indication that fraud, gross abuse or corrupt practices may be involved;

7.3.3.3.3 If the subagreement is terminated for default or for convenience.

7.4 Covenant Against Contingent Fees

7.4.1 ENGINEER warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or continent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ENGINEER for the purpose of securing business. For breach or violation of this warranty, CITY OF FAYETTEVILLE shall have the right to annul this Agreement without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

7.5 Gratuities

7.5.1 If CITY OF FAYETTEVILLE finds after a notice and hearing that ENGINEER or any of ENGINEER's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of CITY OF FAYETTEVILLE, in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, CITY OF FAYETTEVILLE may, by written notice to ENGINEER terminate this Agreement. CITY OF FAYETTEVILLE may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which CITY OF

FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

7.5.2 In the event this Agreement is terminated as provided in Paragraph 7.5.1, CITY OF FAYETTEVILLE may pursue the same remedies against ENGINEER as it could pursue in the event of a breach of the Agreement by ENGINEER. As a penalty, in addition to any other damages to which it may be entitled by law, CITY OF FAYETTEVILLE may pursue exemplary damages in an amount (as determined by CITY OF FAYETTEVILLE) which shall be not less than three nor more than ten times the costs ENGINEER incurs in providing any such gratuities to any such officer or employee.

7.6 Arkansas Freedom of Information Act

7.6.1 City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF FAYETTEVILLE, ENGINEER will provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

7.6.2 Pursuant to Ark. Code Ann. § 25-19-105(b)(20), the personal information of City water system customers must be treated as confidential information and shall not be made available for inspection except by ENGINEER'S employees as required to fulfill the terms of this agreement. Upon completion of its contractual duties and after approval of the Water Master Plan, ENGINEER agrees to destroy or return to the CITY OF FAYETTEVILLE any copies of records containing information about City water system customers.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE, ARKANSAS by and through its Mayor, and ENGINEER, by its authorized officer have made and executed this Agreement as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

OLSSON, INC.

By: _____
Mayor, Lioneld Jordan

By: Brad B. Hammond Ronald L. Mersch
Brad B. Hammond, P.E. Ron Mersch

ATTEST:

By: _____
City Clerk

Title: Team Leader Office Leader

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

**CITY OF FAYETTEVILLE
AGREEMENT FOR ENGINEERING SERVICES**

APPENDIX A – SCOPE OF SERVICES

This is **Appendix A**, consisting of 3 pages, referred to in and part of the **Agreement For Professional Engineering Services** between CITY OF FAYETTEVILLE, ARKANSAS and OLSSON, INC. dated _____.

Initial:

CITY OF FAYETTEVILLE _____
OLSSON, INC. _____



The following contains additional Scope of Services tasks.

A.1 General Scope

The work covered by this agreement includes surveying, engineering, and landscape architecture services for the expansion of the Gulley Park parking area off Township Street. The project scope will generally be in accordance with the extents and scope shown in preliminary master planning concept documents provided by the CITY OF FAYETTEVILLE.

A.2 Specific Scope of Services

OLSSON shall provide a suitable staff to complete the necessary surveys, to perform detailed design, to prepare plans and specifications, to provide needed services during the bid phase, and to provide other services as may be directed by the CITY OF FAYETTEVILLE. The staff shall consist of surveyors, engineers, technicians, inspectors and other assistants as may be necessary to carry on the work in an efficient and expeditious manner. OLSSON will provide the following services:

A2.1 Design Services

1. Meet with the CITY OF FAYETTEVILLE as required for project needs.
2. Perform topographic survey of the area where the parking lot will be reconstructed/expanded in addition to the area northeast of the existing playground and west of the bridge.
3. Prepare construction specifications and drawings, including necessary engineering, land architecture, and drafting. Plans will include the following sheets:
 - a. Title Sheet with Vicinity Map
 - b. Site Plan
 - c. Site Grading and Drainage Plan
 - d. Basic Planting Plan
 - e. Lighting Plan
 - f. Sediment Control Plan
4. The Basic Planting Plan will conform to the minimum standards set forth by the CITY OF FAYETTEVILLE. The minimum planting plan shall include construction details, quantity, location, size and species of proposed plant materials. The plan will also depict the existing trees that will be preserved or removed as well as details for tree protection measures. Exclusions include bufferyard landscaping, landscape lighting plans, and irrigation plans. OLSSON shall only provide irrigation design by performance specification.

5. Prepare opinion of probable construction cost of the authorized construction.
6. Any permitting fees will be paid directly by the CITY OF FAYETTEVILLE, or by OLSSON as a reimbursable expense upon request by the CITY OF FAYETTEVILLE. Nevertheless, not-to-exceed fees shown below do not include permitting or review fees. The scope does NOT include SWPPP plans (the project is assume to be under one acre of disturbance), biological surveys or archaeological/cultural resource surveys, or USCOE 404 permits. If required by regulatory agencies, these services may be provided as additional services by amendment of this contract.

A2.2 Site Improvement Plan (SIP) Planning Submittal

Coordinate with City of Fayetteville Planning regarding necessary SIP submittals and reviews, including:

1. Attendance of a Pre-Development Meeting with the City Planning Staff
2. Preparing and packaging preliminary design plans into a SIP submittal, including
 - a. Title Sheet
 - b. Location maps and index
 - c. Sediment Control Plan
 - d. Site Plan
 - e. Site Grading and Drainage Plan
 - f. Tree Preservation and Site Analysis Plan
 - g. Landscape Plan
3. Preparation of a Drainage Report in accordance with City requirements, including:
 - a. Soil map
 - b. PreDeveloped Stormwater Flow Paths and Calculations
 - c. Post-Developed Stormwater Flow Paths and Calculations
 - d. Hydrograph and Peak Flow Analysis
 - e. Pondpack Output
 - f. Report Preparation
4. Submissions to Planning and responses to comments
5. Preparation and submittal of Grading Permit Application

A2.3 Bidding Services

Provide technical interpretation of the plans and specifications, prepare addenda as required, attend a pre-bid conference and the bid opening, provide an engineering analysis of the bids received, make recommendations concerning award of the construction contract and assist in the preparation of contract documents. Supporting documents will be prepared and submitted to the CITY OF FAYETTEVILLE.

A.3 Project Deliverables

The following will be submitted to the CITY OF FAYETTEVILLE, or others indicated, by the OLSSON as part of the Project.

1. Two (2) copies of Survey Documents
2. Two (2) copies of the Construction Bid Documents
3. Necessary copies of the SIP and Application
4. Necessary copies of the Grading Permit Application
5. Electronic files in accordance with the Agreement.

A.4 Compensation

In consideration of the performance of the foregoing services by OLSSON, the CITY OF FAYETTEVILLE shall pay to OLSSON compensation as follows:

1. Compensation shall be paid to OLSSON on the basis of OLSSON's standard hourly rates in effect at the time the work is performed, plus reimbursable expenses in accordance with the attached reimbursable expense schedule. Rates are adjusted annually at the beginning of each calendar year. OLSSON agrees to keep the CITY OF FAYETTEVILLE apprised in a timely manner of costs incurred.
2. The maximum total not-to-exceed amount for services described in Section A2.1 through A2.3 is tabulated as follows. Fee amounts for each phase may exceed subtotals below, but total fee will not exceed the total fee shown below.

| | |
|--------------------------------|------------------|
| a. A2.1 Design Services | \$ 28,523.00 |
| b. A2.2 SIP Planning Submittal | \$ 5,624.00 |
| c. A2.3 Bidding Services | \$ 2,761.00 |
| d. Expenses | <u>\$ 500.00</u> |
| TOTAL | \$ 37,408.00 |

A.5 Project Design Schedule

OLSSON shall begin work under this Agreement within two (2) working days of a Notice to Proceed (NTP) and shall complete the work described in Section A2 above in accordance with the schedule below.

1. Submit survey drawings and 30% design drawings for review:
 - o 30 Calendar days after NTP
2. Submit SIP application to City Planning Department
 - o 30 Calendar days after receipt of written comments regarding 30% design from CITY OF FAYETTEVILLE
3. Revise 30% design drawings submit 90% design drawings and opinion of probable cost:
 - o 30 Calendar days after receipt of written comments regarding SIP submittals
4. Provide final biddable construction documents
 - o 15 Calendar days after receipt of written comments regarding 90% design from CITY OF FAYETTEVILLE

A.6 Attachments

1. OLSSON Fee Estimate Spreadsheet
2. OLSSON Labor Billing Rate Schedule for 2019
3. OLSSON Reimbursable Expense Schedule for 2019

FEE ESTIMATE - Fayetteville Gulley Park Parking Lot Expansion

| Item No. | Tasks | Olsson | | | | | | | | | | Total Manhours | Total Labor Fee | Subtotals |
|-------------|---|-------------|--------------------------------|------------------|--------------------|-----------------|-----------------------------|------------------|----------------------------|-------------------|-----------------------------------|----------------|-----------------|-----------|
| | | Team Leader | Project Manager/ Senior Eng | Project Engineer | Assistant Engineer | Senior Surveyor | Survey Crew - One Person | Senior Inspector | Senior Landscape Architect | Design Technician | Senior Administrative Coordinator | | | |
| | | | | | | | | | | | | | | |
| A2.1 | Design Services | | | | | | | | | | | | | |
| | Project Administration (Meetings with City, Status Updates, etc.) | 8 | | | | | | | | | | 8 | \$ 1,560 | |
| | Topographic Survey | | 1 | | | 9 | 12 | | | | | 22 | \$ 2,715 | |
| | Parking Lot Layout/Design | 1 | 4 | | 8 | | | 4 | | | | 17 | \$ 2,267 | |
| | Drainage Design/LID Measures | 1 | 4 | | 40 | | | | | | | 45 | \$ 4,895 | |
| | Construction Documents: | | | | | | | | | | | 0 | \$ - | |
| | Title Sheet with Vicinity Map | | | | 4 | | | | | 0.5 | | 5 | \$ 462 | |
| | Site Plan with Parking Layout/Grading/Drainage | 2 | 4 | | 32 | | | | | 2 | | 40 | \$ 4,512 | |
| | Basic Planting Plan | | | | | | | 24 | | | | 24 | \$ 3,624 | |
| | Lighting Plan | | 12 | | | | | | | | | 12 | \$ 1,980 | |
| | Sediment Control Plan | | 2 | | 4 | | | | | | | 6 | \$ 734 | |
| | Detail Sheets | | 4 | | 16 | | | | | | | 20 | \$ 2,276 | |
| | SWPPP (Not Required) | | | | | | | | | | | 0 | \$ - | |
| | Specifications | 4 | | | 8 | | | | | | 16 | 28 | \$ 3,108 | |
| | QA/QC | 2 | | | | | | | | | | 2 | \$ 390 | |
| | | | | | | | | | | | | | | \$ 28,523 |
| A2.2 | Site Improvement Plan (SIP) Planning Review | | | | | | | | | | | | | |
| | Package Prelim Design Plans for SIP Reviews | | | | 4 | | | | | | | 4 | \$ 404 | |
| | Add Tree Preservation and Site Analysis Plan | | | | 8 | | | | | | | 8 | \$ 808 | |
| | Submissions to Planning and Grading Permit Application | | 2 | | 8 | | | | | | | 10 | \$ 1,138 | |
| | Prepare Drainage Report (Calcs under Design Scope) | | 2 | | 16 | | | | | | | 18 | \$ 1,946 | |
| | Responses to City Comments | | 2 | | 4 | | | | | | 2 | 8 | \$ 924 | |
| | Predevelopment Meeting | | | | 4 | | | | | | | 4 | \$ 404 | |
| | | | | | | | | | | | | 0 | \$ - | |
| | | | | | | | | | | | | | | \$ 5,624 |
| A2.3 | Bid Phase Services | | | | | | | | | | | | | |
| | Coordinate with Purchasing and upload documents | | 2 | | | | | | | | | 2 | \$ 330 | |
| | Answer Bidder Questions and Prepare Addenda | 1 | 4 | | 6 | | | | | | 4 | 15 | \$ 1,841 | |
| | Attend Bid Opening | | 2 | | | | | | | | | 2 | \$ 330 | |
| | Provide Recommendation of Award | | 1 | | | | | | | | 1 | 2 | \$ 260 | |
| | | | | | | | | | | | | 0 | \$ - | |
| | | | | | | | | | | | | | | \$ 2,761 |
| | Total Manhours | 19 | 46 | 0 | 162 | 9 | 12 | 0 | 28 | 2.5 | 23 | 302 | | |
| | Total Labor | \$ 3,705 | \$ 7,590 | \$ - | \$ 16,362 | \$ 990 | \$ 1,560 | \$ - | \$ 4,228 | \$ 288 | \$ 2,185 | | \$ 36,908 | |
| | Total Expenses | | | | | | | | | | | | \$ 500 | |
| | Total Labor and Expenses | | | | | | | | | | | | \$ 37,408 | |

OLSSON BILLING RATE SCHEDULE

2019 LABOR RATES

| <u>Description</u> | <u>Range</u> |
|------------------------------|--------------|
| Principal..... | 109 - 381 |
| Project Manager..... | 103 - 189 |
| Project Professional..... | 94 - 168 |
| Assistant Professional..... | 47 - 143 |
| Designer..... | 84 - 178 |
| CAD Operator..... | 32 - 116 |
| Survey..... | 43 - 171 |
| Construction Services..... | 40 - 189 |
| Administrative/Clerical..... | 29 - 130 |

Note:

1. Special Services not included in above categories will be provided on a Special Labor Rate Schedule
2. Rates subject to change based upon updates to Billing Rates for upcoming year.

REIMBURSABLE EXPENSE SCHEDULE

The expenses incurred by Olsson or Olsson's independent professional associates or consultants directly or indirectly in connection with the Project shall be included in periodic billing as follows:

| <u>Classification</u> | <u>Cost</u> |
|---|--------------------|
| Automobiles (Personal Vehicle) | \$0.58/mile* |
| Suburban's and Pick-Ups | \$0.75/mile* |
| Automobiles (Olsson Vehicle) | \$85.00/day |
| Other Travel or Lodging Cost | Actual Cost |
| Meals | Actual Cost |
| Printing and Duplication including Mylars and Linens | |
| In-House | Actual Cost |
| Outside | Actual Cost+10% |
| Postage & Shipping Charges for Project Related Materials including Express Mail and Special Delivery | Actual Cost |
| Film and Photo Developing | Actual Cost+10% |
| Telephone and Fax Transmissions | Actual Cost+10% |
| Miscellaneous Materials & Supplies Applicable to this Project | Actual Cost+10% |
| Copies of Deeds, Easements or other Project Related Documents | Actual Cost+10% |
| Fees for Applications or Permits | Actual Cost+10% |
| Sub-Consultants | Actual Cost+10% |
| Taxes Levied on Services and Reimbursable Expenses | Actual Cost |

*Rates consistent with the IRS Mileage Rate Reimbursement Guidelines (Subject to Change).